FILED

APR 2 5 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

XL SPECIALTY COMPANY, as subrogee of L J AIR, INC.,

Plaintiff,

v.

VILLAGE OF SCHAUMBURG, a municipal corporation,

Defendant.

06CV2299
JUDGE HOLDERMAN
MAG. JUDGE ASHMAN

NOTICE OF REMOVAL

NOW COMES Defendant, VILLAGE OF SCHAUMBURG, by and through its counsel, MADSEN, FARKAS & POWEN who, pursuant to 28 U.S.C. §§ 1331, 1337, and 1441(b), and in accord with 28 U.S.C. § 1446, provides the following Notice of Removal to the United States District Court for the Northern District of Illinois, for the above-styled matter and states as follows:

1. On March 28, 2006, Plaintiff, XL SPECIALTY COMPANY ("XL"), filed its Complaint at Law in the Circuit Court of Cook County, as case number 2006 L 003272 against VILLAGE OF SCHAUMBURG ("SCHAUMBURG"), a municipal corporation, as the sole defendant.[1] A copy of the Plaintiff's Complaint at Law ("Complaint") is attached as Exhibit A.

[1] The Complaint named several additional entities and non-entities as Respondents in Discovery as provided for under Illinois Rules of Civil Procedure. 735 ILCS 5/2-402. The Seventh Circuit has held that "a 'respondent in discovery' pursuant to 735 ILCS 5/2-402 is a category of a non-defendant. *Roe v. O'Donohue*, 38 F.3d 298, 300 (7th Cir.1994). Additionally, under Illinois law, "a respondent in discovery is not a party to a lawsuit." *Allen v. Thorek Hosp.*, 275 Ill. App.3d 695, 703 (Ill. App. 1st Dist. 1995). Further, the Seventh Circuit has concluded that even for the purposes of determining diversity of citizenship of the parties, the citizenship of a respondent in discovery is irrelevant since it is a non-party

2. SCHAUMBURG, was in receipt of the initial Complaint, as defined by 28 U.S.C. § 1446(b) on March 28, 2006.

3. XL complains of damage to an aircraft which was allegedly incurred when said aircraft departed the hard surface taxiway at Schaumburg Regional Airport while positioning for take-off.

4. XL complains of a breach of duty created under federal law, including a violation of the standards expressed in FAA Advisory Circular AC 150/5300-13, specifically with regards to Runway Safety Areas (RSA). *See e.g.* Exhibit A ¶ 10.

5. XL additionally complains of a breach of duty created under state common law negligence standards. *See* Exhibit A ¶ 14.

6. Plaintiff's claim is expressly and/or implicitly pre-empted by the Federal Aviation Act of 1958 ("Act"). To wit:

The Act provides that: "The United States Government has exclusive sovereignty of airspace of the United States." 49 U.S.C. § 40103. The FAA comprehensively addresses and assigns the Administrator of the Federal Aviation Administration with oversight for all facets of aviation, including the delicate balance of several competing interests. *Id.* Legislative history of the Act further emphasizes the pervasive and exclusive federal regulation of aviation. The Senate concluded:

> . . . aviation is unique among transportation industries in relation to the federal government – it is the only one whose operations are conducted almost within the federal jurisdiction, and are subject to little or no regulation by the states or local government. Thus, the government bears virtually complete responsibility for the promotion and supervision of this industry of public interest.

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to the lawsuit. Accordingly, SCHAUMBURG does not believe that consent of the Respondents in Discovery is required for its removal and therefore did not solicit it.

S. Rep. No. 181 85th Cong., 2nd Sess. 5 (1958); reprinted in *Abdullah v. American Airlines, Inc.*, 181 F.3d 363, 368 (3rd Cir. 1999). Further, in *Abdullah*, the court definitively resolved the status of Federal pre-emption over aviation:

> . . . we find that Congress, in enacting the [Federal Aviation Act] and relevant regulations, intended generally to pre-empt state and territorial regulation of air safety.
>
> * * *
>
> We find that *any* state or territorial standards of care relating to aviation safety are federally pre-empted. Our analysis is sustained by reference to the broad scope of the FAA . . . . It is also supported by the decisions in which courts found federal pre-emption of discrete, safety related matters, such as airspace management, flight operations and aviation noise, because of the promulgation of specific federal regulations over those aspects of air safety. [citations omitted] . . . . It follows from the evident intent of Congress that there be federal supervision of air safety and from the decisions in which courts have found federal pre-emption of discrete, safety related matters, that federal law pre-empts the general field of aviation safety.

Abdullah, 181 F.3d at 367-68; 371. The Northern District of Illinois adopted the finding in *Abdullah* in *Deahl v. Air Wisconsin*, 2003 WL 22843073 at 4, (N.D. Ill. 2003).

7. XL's Complaint alleges violations of state standards – standards that have been usurped and subsumed by the preemptive effect of the standards created under the Congressional mandates contained within the Act. The risk of inconsistent interpretations of the appropriate federal standard for airport construction and maintenance requires that a federal forum be available to adjudicate this matter. *See, Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 125 S.Ct. 2363, 2367 (2005) ("a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justly resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues").

WHEREFORE, based upon federal question jurisdiction, as set forth in 28 U.S.C. § 1331, and removal as set forth in 28 U.S.C. § 1441 *et seq.*, the foregoing matter is ripe for removal from the Circuit Court of Cook County to the United States District Court for the Northern District of Illinois, Eastern Division.

Respectfully submitted,

VILLAGE OF SCHAUMBURG

By: ______________________________

One of Its Attorneys

Brandt R. Madsen
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06x036(SBF)

Firm No. 05432

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

XL Specialty Company,
as subrogee of L JAir, Inc.,
Plaintiff

v.

Village of Schaumburg, a municipal corporation;

Defendant,

and

Schaumburg Regional Airport;
Schaumburg Regional Airport Advisory Commission;
Village of Schaumburg Department of Transportation;
June E. Johnson as Director of the Village of Schaumburg Department of Transportation;
Betty Richter as Airport Manager;
Airport Management, Inc.,
Village of Schaumburg Park District, a municipal corporation;
and Northwest Flyers, Inc.

Respondents in Discovery

No. 2006L003272
CALENDAR/ROOM X
TIME 00:00
Property Damage

PLAINTIFF DEMANDS JURY

COMPLAINT AT LAW

Count I
Negligence - Village of Schaumberg

NOW COMES the Plaintiff, XL Specialty Company, as subrogee of L JAir, Inc., by and through its attorneys, KIESLER & BERMAN, and complaining of the defendant, VILLAGE OF SCHAUMBURG, a municipal corporation, states as follows:

EXHIBIT
A

1. On and before April 1, 2005, defendant Village of Schaumburg owned, operated, managed, maintained and controlled the Schaumburg Regional Airport and its runways, taxiways, and utiltities, located at 905 West Irving Park Road, Schaumburg, Illinois.

2. On or about April 1, 2005, L J Air, Inc. owned a certain Beech 200 aircraft bearing FAA registration N437WF ("Aircraft");

3. On or about April 1, 2005, the Aircraft was on lease to Up North Limited Partnership ("Up North"). Up North had no other interest, financial ownership, or otherwise in the aircraft at all relevant times herein.

4. XL Specialty Company issued Policy No. NAC3024321 to Up North for aircraft physical damage coverage, with effective dates of December 3, 2004 to December 3, 2005.

5. The policy provided aircraft physical damage coverage in the amount of $1,600,000 less an in-motion deductible of $15,000.

6. L J Air, Inc. was named as an additional insured for the purposes of aircraft physical damage coverage as the owner/lessor of the aircraft.

7. On or about April 1, 2005, the aircraft was involved in an accident while being taxied at the Schaumburg Regional Airport.

8. The accident occurred when the left main landing gear of the aircraft struck a manhole/utility cover, which projected above a grassy surface immediately adjacent to the intersection of two paved taxiways/runways.

9. At the time and place aforesaid,Village of Schaumburg had a duty to exercise reasonable care to maintain its airport property in a reasonably safe condition and in compliance with applicable guidelines.

10. FAA Advisory Circular AC 150/5300-13 of February 24, 1992, sets forth guidelines for airport design, including surface grading requirements for runway shoulders and Runway Safety Areas. These guidelines are mandatory for airports that receive Federal Airport Improvement Funds, including Schaumberg Regional Airport.

11. A Runway Safety Area (RSA) refers to an area surrounding a runway designed to enhance the safety of airplanes which leave the runway, and it provides greater accessibility for firefighting and rescue equipment during such incidents. The RSA should be capable, under normal (dry) conditions, of supporting airplanes without causing structural damage to the airplanes or injury to their occupants.

12. The Advisory Circular states that the RSA shall be:

> "(1) cleared and graded and have no potentially hazardous ruts, humps, depressions, or other surface variations;
>
> (2) drained by grading or storm sewers to prevent water accumulation;
>
> (3) capable, under dry conditions, of supporting snow removal equipment, aircraft rescue and firefighting equipment, and the occasional passage of aircraft without causing structural damage to the aircraft; and
>
> (4) free of objects, except for objects that need to be located in the RSA because of their function."

13. On and before April 1, 2005,Village of Schaumburg, through its duly authorized agents, servants, and/or employees, had actual or constructive knowledge that the manhole/utility cover was not in compliance with the RSA guidelines; and/or needed to be altered because it presented a hazard to aircraft.

14. At the time and place aforesaid,Village of Schaumburg, through its duly authorized agents, servants, and/or employees, was negligent in one or more of the following respects:

a. created a dangerous condition on the aforesaid premises when they knew or, in the exercise of reasonable care, should have known, that the manhole/utility cover was too close to the taxiways/runways and was a hazard to aircraft;

b. allowed a dangerous condition to exist on the aforesaid premises when they knew or, in the exercise of reasonable care, should have known, that the manhole/utility cover was too close to the taxiways/runways and was a hazard to aircraft;

c. created a dangerous condition on the aforesaid premises by failing to properly install, build or maintain the taxiways/runways and the surrounding areas;

d. allowed a dangerous condition to exist on the aforesaid premises by failing to properly install, build or maintain the taxiways/runways and the surrounding areas;

e. failed to adequately warn patrons of the dangerous condition which existed on the aforesaid premises;

f. failed to make a reasonable inspection of the premises to discover and repair the dangerous condition which existed on the aforesaid premises;

g. Failed to provide cleared, graded, and safe taxiways/runways and surrounding areas;

h. Failed to exercise ordinary care to maintain its property in a reasonably safe condition;

i. Failed to comply with the standards and guidelines set forth by the Federal Aviation Administration, including but not limited to FAA Advisory Circular AC 150/5300-13 of February 24, 1992;

j. Was otherwise careless and/or negligent.

15. As a direct or proximate result of one or more of the aforesaid negligent acts or omissions of defendant Village of Schaumburg, the aircraft's moving propellers struck the ground, and the aircraft sustained severe damage.

16. As a direct or proximate result of one or more of the aforesaid negligent acts or omissions, the aircraft sustained substantial damage in the amount of $900,000;

17. L J Air, Inc. submitted a claim to XL for payment of damages to the aircraft under the physical damage coverage of the policy identified herein.

18. XL was obligated to pay, and did pay L J Air, Inc. in the amount of $885,000 ($900,000 minus $15,000 deductible) for the damage to the aircraft proximately caused by the accident.

19. L J Air, Inc. assigned to XL any and all claims and causes of action that L J Air, Inc. might have against any third party arising out of the losses to the extent of the amount paid under the policy. XL is subrogated to all of the rights of its insured, L J Air, Inc., against any and all third parties. XL therefore brings this cause of action.

WHEREFORE, the plaintiff, XL Specialty Company, as subrogee of L JAir, Inc., demands judgment against the Defendant, Village of Schaumburg, in an amount in excess of $50,000, plus costs, and any additional relief this court deems fair and just.

Count II

Respondents in Discovery

NOW COMES the Plaintiff, XL Specialty Company, as subrogee of L JAir, Inc., by and through its attorney, KIESLER & BERMAN, and as to Respondents in Discovery Schaumburg

Regional Airport; Schaumburg Regional Airport Advisory Commission; Village of Schaumburg Department of Transportation; June E. Johnson as Director of the Village of Schaumburg Department of Transportation; Betty Richter as Airport Manager; Airport Management, Inc., Village of Schaumburg Park District, a municipal corporation; and Northwest Flyers, Inc., (jointly "Respondents in Discovery") states as follows:

1. Plaintiff believes that Respondents in Discovery have information essential to the determination of who should properly be named as additional defendants in this action.

2. Plaintiff respectfully requests that the Respondents in Discovery answer written and oral discovery necessary to make that determination.

WHEREFORE, the plaintiff, XL Specialty Company, as subrogee of L JAir, Inc., respectfully requests that Respondents in Discovery Schaumburg Regional Airport; Schaumburg Regional Airport Advisory Commission; Village of Schaumburg Department of Transportation; June E. Johnson as Director of the Village of Schaumburg Department of Transportation; Betty Richter as Airport Manager; Airport Management, Inc., Village of Schaumburg Park District, a municipal corporation; and Northwest Flyers, Inc. appear and respond to discovery.

Respectfully submitted,

KIESLER & BERMAN

By: ____________________
STEPHEN B. FREW

Stephen B. Frew
KIESLER & BERMAN
70 West Madison, Suite 4200
Chicago, Illinois 60602
(312) 332-2840
Attorney No.: 05432

06x036(SBF) Firm No. 05432

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

XL Specialty Company, as subrogee of L JAir, Inc.,	)	
Plaintiff	)	
v.	)	
Village of Schaumburg, a municipal corporation;	)	
Defendant,	)	
et.al.	)	No.:

AFFIDAVIT

I, STEPHEN B. FREW, state under oath:

1. I am an attorney with Kiesler & Berman and am responsible for filing of the Complaint at Law in this matter.

2. The total of money damages sought by plaintiff does exceed $50,000.00, exclusive of interest and costs.

KIESLER & BERMAN

By: ____________________
STEPHEN B. FREW

Subscribed and Sworn to Before
Me This 27th day of March, 2006

____
Notary Public

"OFFICIAL SEAL"
JACKIE KOWALEWSKI
NOTARY PUBLIC STATE OF ILLINOIS
COMMISSION EXPIRES 08/16/08

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CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
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EASTERN DIVISION

XL SPECIALTY COMPANY, as subrogee of L J AIR, INC.,

Plaintiff,

v.

VILLAGE OF SCHAUMBURG, a municipal corporation,

Defendant.

06CV2299
JUDGE HOLDERMAN
MAG. JUDGE ASHMAN

NOTICE OF FILING

TO: Stephen B. Frew
Kiesler & Berman
70 W Madison St Ste 4200
Chicago, IL 60601

PLEASE TAKE NOTICE that on the 25th day of April, 2006, we caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Notice of Removal**, **Appearances of Counsel** and **Civil Cover Sheet,** copies of which are attached hereto and served upon you herewith.

Respectfully Submitted,
VILLAGE OF SCHAUMBURG

By: ______________________
One of Its Attorneys

Brandt R. Madsen, Esq.
Jeffrey D. Waltuck
MADSEN, FARKAS & POWEN, L.L.C.
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(312) 379-3444
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Firm ID No. 37934

CERTIFICATE OF SERVICE

The undersigned attorney states that he caused to be mailed a copy of the above-described document to all counsel of record, by depositing same, postage prepaid, in an official depository of the United States Mail at 111 West Washington Street, Chicago, Illinois on this 25th Day of April, 2006.

Jeffrey D. Waltuck